

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: W.R GRACE & CO., ET AL.)	
)	
)	BANKRUPTCY NO. 01-01139-RJN
)	CHAPTER 11
)	(Jointly Administered)
DEBTORS.)	
)	

**RESPONSE OF PBGC TO MOTION FOR ENTRY OF AN ORDER
AUTHORIZING THE DEBTORS TO CONTRIBUTE FUNDS INTO THE
TRUST FUNDING THE CURTIS BAY PENSION PLAN TO SUPPORT
AMENDMENTS TO ENHANCE BENEFITS THEREUNDER**

The Pension Benefit Guaranty Corporation ("PBGC"), a potential creditor in this case, supports the W.R. Grace & Co., et al ("Debtors") Motion for Entry of an Order authorizing it to contribute funds into the Trust funding the W.R. Grace & Co. Retirement Plan for Hourly Workers of Curtis Bay (the "Union Pension Plan").

PBGC is a wholly-owned United States government corporation and an agency of the United States that administers the defined benefit pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1301-1461 (2002). When an underfunded single-employer plan covered by Title IV terminates, the PBGC becomes trustee of the plan and, subject to certain statutory limitations, pays the plan's unfunded benefits with its insurance funds. See 29 U.S.C. §§ 1321-1322, 1342. The Union Pension Plan is a tax-qualified, single-employer, defined benefit pension plan to which Title IV of ERISA applies. See 29 U.S.C. § 1321.

In accordance with a collective bargaining agreement covering the Curtis Bay Maryland plant that Debtors negotiated with the International Chemical Workers Union in October of 2002,

Debtors are obliged to amend the Union Plan to increase pension benefits. The present motion seeks authority to make a required contribution to the Union Pension Plan in an amount not to exceed \$10,000,000.

PBGC agrees with Debtors that the Internal Revenue Code (“IRC”) requires the proposed contribution to the Union Plan.¹ According to IRC § 401(a)(33)(A), a trust funding a pension plan would “not constitute a qualified trust” if a plan sponsor operating under bankruptcy protection adopts a pension plan amendment which increases benefits and the funding requirements unless an exception contained in IRC § 401(33)(B) is met. IRC § 401(a)(33)(B)(i) allows for the adoption of an amendment to increase benefits of a defined benefit pension plan where “the plan, were such amendment to take effect, would have a funded current liability percentage (as defined in IRC § 412(l)(8)) of 100% or more.” Debtor’s actuary currently estimates the Union Plan would meet the 100% funding requirement by contributing \$8,600,000 to \$9,000,000 to the Trust that funds the Union Pension Plan. That calculation will not be finalized until May of 2003. Motion ¶¶ 14, 18.

Therefore, because the proposed contribution is required in order to comply with IRC § 401(a)(33), the Court should authorize Debtors to make the contribution to the Trust funding the Union Pension Plan.

¹ PBGC notes that the Internal Revenue Service is the agency responsible for interpreting the IRC. Accordingly, PBGC’s observations in this motion should not be regarded as authoritative.

CONCLUSION

For the foregoing reasons, PBGC supports Debtor's Motion for the Entry of an Order Authorizing Debtor's to Contribute Funds to the Trust Funding the Union Pension Plan.

Respectfully submitted,

Dated: February 7, 2003

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of February 2003, the foregoing **Response of PBGC to Motion for Entry of an Order Authorizing the Debtors to Contribute Funds into the Trust Funding the Curtis Bay Pension Plan to Support Amendments to Enhance Benefits Thereunder** was served electronically or by Facsimile on the following:

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